

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 23-1260 MJ

THEODORE IAN CHAVEZ, IV,

Defendant.

ORDER

This matter comes before the Court on the United States' Notice of Appeal and Motion to Stay Order Setting Conditions of Release, (Doc. 8), filed August 16, 2023. The issue on appeal remains under consideration by this Court. The concurrent Motion to Stay, however, is denied as moot.

The Court has listened to the audio recording of the detention hearing of August 16, 2023, before Magistrate Judge Fouratt and the Clerk's Minutes (Doc. 10). The audio record clearly indicates that after ordering the defendant's release on conditions, Judge Fouratt asked the Assistant United States Attorney whether she had any objections to the Court entering the order as announced. The AUSA responded that she did not anticipate filing anything but asked the Court to stay the order until she had a chance to confer with her leadership. As a result, Judge Fouratt agreed, stating that "unless there is an appeal filed by 9:30 am tomorrow, the order will go into effect." On the same day as the order of release, the United States filed the instant appeal. Indeed, no order of release has been entered on the record. In this instance, the motion to stay brought to the District Court was not necessary and, indeed, not proper. In any case in which

the Magistrate Judge orders release and the United States seeks a stay, that motion procedurally should be made to that Magistrate Judge for consideration.

Any written brief by the appellant in support of its appeal shall be filed no later than August 30, 2023. Any responsive brief shall be filed within 14 days thereafter. The appellant shall notify the Court as soon as possible if a brief will not be filed. A reply will not be entertained by the Court unless requested.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE